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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,781	10/23/2003	Changyong Lee	4220-123 US	7161

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EXAMINER

BEKKER, KELLY JO

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/691,781	Applicant(s) LEE ET AL.	
	Examiner Kelly Bekker	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Amendments made December 12, 2008 have been entered.
Claim 4 remains pending.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 12, 2008 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 4 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 4 recites, "washing long grain rice with purified water". Although the disclosure as originally filed has support for washing the rice, Figure 1 and Examples, the disclosure as originally filed does not have support for using purified water in the washing step.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Komatsu et al. (US 3892058) in view of Meyer et al (US 6139898).

Komatsu et al. (Komatsu) teaches of a process for high temperature and high pressure short time sterilization in plastic packaging (Abstract). Komatsu (Abstract, Column 5 lines 20-27, and Column 15 lines 30-44) teaches of placing or filling the food product in a heat resistant plastic container prior to sterilization. Komatsu teaches that the sterilization after filling into a container is at a temperature of 130-160C, high pressure, and a sterilization time of 30 seconds-15 minutes (Column 15 lines 30-44 and Column 17 lines 5-20). Komatsu teaches that the sterilized food is semi-cooked and thus is cooked after sterilization and before consumption (Column 11 lines 1-12). Komatsu teaches that the process and packaging are to be utilized for food articles that are intended to be highly preservable and that enzymatically brown and lose natural colors, flavor, and texture upon conventional heat sterilization processes (Column 11 lines 7-12, Column 17 line 63 through Column 18 line 36). Note: Claim 4 recites a sterilization step, which occurs 4-10 times repeatedly for 4-8 seconds. Since the sterilization step, as instantly claimed, occurs repeatedly and without interruption, one of ordinary skill in the art would expect that the sterilization step, as instantly claimed, would be functionally equivalent to a one-time sterilization process occurring for 16 to 80 seconds, absent any clear and convincing arguments to the contrary. Alternatively it would have been obvious to one of ordinary skill in the art at the time the invention was made to perform either one or many sterilization steps until the desired result was achieved, and one of ordinary skill in the art would expect both processes to yield equally effective results.

Komatsu is silent to the process as including long grain rice, to the rice as washed with purified water, then coated with a solution of emulsified oil, then drained of excess water, and then filled into a packaging for sterilization, to the rice as cooked in a solution of emulsified oil, and to sealing and packaging the resultant cooked rice.

Meyer teaches that the partially or fully cooked rice is soaked in water and advantageously coated with emulsified oil to provide a full moisture shelf stable product with outstanding organoleptic properties. Refer specifically to Abstract, Column 1 lines

Art Unit: 1794

29-31 and 55-67, and Column 2 lines 1-26. Meyer teaches that the rice is washed in water to minimize starch losses and open up the structure of the grain in order to facilitate heat transfer and water uptake during blanching (Column 2 lines 5-15). Meyer teaches that excess water is drained from the rice prior to packaging and sterilization (Column 2 line 53 through Column 3 line 17). Meyer teaches that it is desirable to coat the rice grain with emulsified oil at a process step before packaging and later cook the rice grains in the emulsified oil (Column 1 line 63 through Column 2 line 4 and Column 3 lines 7-9 and 27-34).

Regarding the food product as long grain rice, it would have been obvious to one of ordinary skill in the art at the time the invention was made for the food product to be long grain rice if a fluffy rice one dish meal was desired and because rice was a food product which was known to lose natural colors, flavor, and texture upon conventional heat sterilization processes, as admitted by applicant Specification, Background of the Invention pages 1-2. One would have been further motivated to use long grain rice in order to gain the known health benefits of the shelf stable product, long grain rice, such as a food product with an enhanced nutritional profile.

Regarding the rice as washed with purified water, it would have been obvious to one of ordinary skill in the art at the time the invention was made to wash the rice with water in order to minimize starch losses and/or open up the structure of the grain in order to facilitate heat transfer and water uptake during blanching as taught by Meyer. It would have been further obvious to one of ordinary skill in the art at the time the invention was made for the water to be purified in order to prevent impurities from contacting and/or sticking to the rice.

Regarding the rice as coated with a solution of emulsified oil after washing and before draining, it would have been obvious to one of ordinary skill in the art at the time the invention was made to coat the rice with an emulsified oil at a processing step prior packaging and sterilization because to do so is desirable and contributes to the production of an improved rice product as taught by Meyer. Specifically regarding the oil coating as applied after washing, but prior to water draining, applicant is reminded that a recitation of the method of making the claimed invention must result in a structural

Art Unit: 1794

difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. Although the reference does not explicitly teach coating the rice with emulsified oil after washing the rice in water and prior to draining the water from the rice, the references teaches that the rice is coated with the emulsified oil prior to packaging and sterilization and that washing and draining of the rice is also performed prior to packaging. It is not believed that switching the order of washing, oil coating, and water draining would make a patentable distinction to the claims and thus the claimed invention would have been obvious as the recited processing steps are performed prior to packaging and sterilization, absent any clear and convincing evidence and/or arguments to the contrary. Applicant is referred to the MPEP 2144.04 and reminded that selection of any order of performing process steps is prima facie obvious in the absence of new or unexpected results. The end product obtained in the process of Komatsu in view of Meyer is a cooked and sterilized product just as in the claimed process. Alternatively, it would have been obvious to one of ordinary skill in the art at the time the invention was made to coat the rice with the emulsified oil after washing with water and before water draining, so that when the water was drained from the rice, excess oil would also be drained from the rice.

Regarding removing water from the long grain rice prior to packaging the long grain rice, Meyer, Column 2 lines 54-67, teaches that water is removed from the rice prior to packaging. It would have been obvious to one of ordinary skill in the art at the time the invention was made to remove the excess water from the rice prior to placing the rice in a package in order to prevent excess water in the final packaged product.

Regarding the rice as cooked in a solution of emulsified oil, as stated above, it would have been obvious to coat the rice with an emulsified oil solution prior to packaging, sterilization, and cooking as taught by Meyer. Thus, as the rice was coated with emulsified oil prior to cooking and as there is no disclosed step of removing the oil prior to cooking, it would be obvious that the rice as taught by the references of record was cooked in an emulsified oil solution.

Regarding sealing and packaging the resultant cooked rice, it would have been obvious to seal and package the rice after cooking in order to form a final cooked product that could be stored and was ready to eat when desired.

Response to Arguments

Applicant's arguments filed December 12, 2008 have been fully considered but they are not persuasive.

Applicants argue unexpected results are obtained from the process of treating rice as instantly claimed, more specifically applicant argues that the claimed sterilization step unexpectedly provides an improved degree of stickiness. Applicant supports this statement with the statement that "the texture of the rice *may* be changed depending on the conditions for sterilization". Applicant's statement that the texture of the rice may be changed is not convincing as applicant has not shown a definite or unexpected result. One of ordinary skill in the art at the time the invention was made would expect drained rice to which water was applied to have an altered texture during heating. It is common sense that heating can alter the structure of rice, especially when the rice grains are not dry. Thus, it is unclear as to what is unexpected about applicant's results. Furthermore, as stated above, Komatsu teaches that the sterilization after filling into a container is at a temperature of 130-160C, high pressure, and a sterilization time of 30 seconds-15 minutes and Claim 4 recites a sterilization step, which occurs 4-10 times repeatedly for 4-8 seconds. Since the sterilization step, as instantly claimed, occurs repeatedly and without interruption, one of ordinary skill in the art would expect that the sterilization step, as instantly claimed, would be functionally equivalent to a one-time sterilization process occurring for 16 to 80 seconds, absent any clear and convincing arguments to the contrary. Alternatively it would have been obvious to one of ordinary skill in the art at the time the invention was made to perform either one or many sterilization steps until the desired result was achieved, and one of ordinary skill in the art would expect both processes to yield equally effective results.

Applicant argues that the rice produced by the method as instantly claimed is different from that of the references of record because the Meyer teaches of treating

Art Unit: 1794

rice in acidified water prior to oil coating. Applicant's argument is not convincing as the features upon which applicant relies (i.e., the exclusion of treating the rice in acidified water) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). There is nothing in the claims that limits the method to only the recited steps; the claim is "comprising" specific steps in a specific order, and thus, the method can include other processing steps. Furthermore, it is noted that Meyer teaches of multiple washing steps and the instantly claimed washing limitation has been addressed above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Bekker whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on (571) 272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lien Tran/
Primary Examiner
Art Unit 1794

/Kelly Bekker/
Examiner
Art Unit 1794